

MATERIALS

FOR

COMPARATIVE COMPETITION POLICY:

CANADA, UNITED STATES, and the EUROPEAN UNION

PROFESSORS RALPH WINTER AND EDWARD IACOBUCCI

VOLUME III

1999/2000

University of Toronto

Faculty of Law

NOTE: THESE MATERIALS ARE NOT TO BE CONSIDERED PUBLISHED, AND THIS COMPILATION IS INTENDED SOLELY FOR TEACHING PURPOSES

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Useful Websites (as of July 1, 1999):
Canadian Competition Bureau Website: http://strategis.ic.gc.ca/SSG/cto1250e/html
Canadian Competition Policy Page: http://csgb.ubc.ca/ccpp/frame_1.htm
U.S. Department of Justice, Antitrust Division: http://usdoj.gov/atr/index.html
European Directorate General IV: http://europa.eu.int/comm/dg04/index_en.htm
* - indicates required readings
I) INTRODUCTION
Canadian Competition Act, R.S.C., 1985, c. C-34. (See Bureau website for complete Act.)
E.C. Treaty Articles, from Van der Woude, Jones and Lewis, E.C. Competition Law Handbook (London: Sweet and Maxwell, 1996)
Selected Antitrust Statutes, U.S., from Sullivan and Hovenkamp, Antitrust Law, Policy and Procedure, 2nd ed. (Charlottesville: Michie, 1989)
*Nancy Gallini, Michael Trebilcock and Edward Iacobucci, "A Comparative Overview of the Evolution of Competition Policy" (1994) (unpublished)
*R. Posner, Antitrust Law: An Economic Perspective, (Chicago: University of Chicago Press, 1976), chap. 2, pp. 8-22
B. Dunlop, D. McQueen, and M. Trebilcock, <u>Canadian Competition Policy: A Legal and Economic Analysis</u> (Toronto: Canada Law Book, 1987), chap. 4, pp. 58-71I-73
Thomas W. Ross, "Introduction: The Evolution of Competition Law in Canada" (April, 1998) 13 Rev. Industrial Organization 1
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*Jacquemine, A. and M. Slade, "Cartels, Collusion and Horizontal Mergers", ch.7 in The

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*Atlantic Sugar Refineries Co. Ltd. et al. v. A.G. Can., (1980) 54 C.C.C. (2d) 373 (S.C.C.)
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*Broadcast Music, Inc. v. Columbia Broadcasting System, 55 F.R.D. 292 (1972, U.S. Dist.)
*United States v. Sealy Inc. 388 U.S. 350 (1967), as edited in Breit, W. and K. Elizinga (eds.), The Antitrust Casebook: Milestones in Economic Regulation (Dryden Press, 1982)
*Transocean Marine Paint Association, Commission Decision 67/454, O.J.L 163/10 (July 20, 1967)
*ACF Chemiefarma v. Commission, Case 41/69 [1970] ECR 661III-18
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*Hartford Fire Insurance Co. v. State of California, 509 U.S. 764 (1993)III-3
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D.G. McFetridge, "Merger Enforcement under the Competition Act after Ten Years" (1998) 13 Rev. Ind. Org. 25
*William Landes and Richard Posner, "Market Power in Antitrust Cases", (1981) 94 Harv. L. Rev. 937-997
*Director of Investigation and Research, Competition Act, Merger Enforcement Guidelines

*U.S. Merger Guidelines, Trade Regulation Reports, April 8, 1997IV-164
Council Regulation 4064/89, O.J. L. 395/1 (Dec. 12, 1989), as amended O.J.L. 257 (Sept. 21, 1990)
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Nestle SA and Source Perrier SA (Case IV/M190), [1993] 4 C.M.L.R. M17IV-216
Robinson, C.K., "Quantifying Unilateral Effects in Investigations and Cases" (May 12, 1997)
G.J. Werden, "Simulating Unilateral Competitive Effects from Differentiated Products Mergers" (Spring 1997) Antitrust 27
*Staples, Inc. v. Federal Trade Commission, 970 F.S. 1066 (D.D.C. 1997)IV-248

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*R.T.P.C., D.I.R. v. BBM Bureau of Management, (1981) 60 C.P.R. (2d) 26IX-99
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;	*Canadian Intellectual Property Enforcement Guidelines (draft) may be viewed at http://strategis.ic.gc.ca/SSG/ct01542e.html
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,	W. E. Kovacic, "Accounting for regulation in determining the application of antitrust rules to firms subject to public utility oversight", (Fall 1995) Antitrust Bulletin 483